



## **Wireless Telecommunications Facilities Ordinance Update Proposed Ordinance and Staff Discussion**

The Planning & Transportation Division has prepared a draft update to the City of Burbank's Wireless Telecommunications Facilities ordinance. The update is intended to address the potential negative aesthetic impacts of wireless facilities while providing for the communication needs of Burbank residents and businesses. Planning & Transportation staff invites all interested parties to submit comments on the proposed ordinance.

A summary of community concerns and the proposed code sections which address these concerns are included at the beginning of this document. Actual changes to the ordinance are noted in **bold underlined text** and ~~strikethroughs~~.

The review and comment period is from: December 9, 2014 to January 9, 2015.

Following the review period a community meeting will be held on January 14, 2015 at 6:00 PM at the Buena Vista Public Library located at 300 North Buena Vista Street, Burbank, CA 91505.

Public hearings with the Planning Board and City Council are tentatively scheduled for February and March, respectively. There will be additional opportunities to comment on the proposed ordinance prior to and at these hearings.

Written comments may be directed to:

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Thank you for your interest in the Wireless Telecommunications Facilities ordinance update, we look forward to hearing from you.

**Summary of Private Property Community Concerns and the Proposed Code Sections Which Address These Concerns**

**1. Issue: Setbacks from and within residential zones**

*Council Direction: Site specific setbacks will be imposed through a Conditional Use Permit (CUP) and City will continue to rely on existing requirement of a 20 foot separation between commercial/industrial and residential zones.*

**2. Issue: Preferred and non-preferred zones**

*Council Direction: For institutional uses in R-1, require CUP but allow only on showing of:*

- i. Significant gap.*
- ii. No feasible less intrusive alternative.*
- iii. Imposition of impact-minimizing conditions.*

**Proposed Code Text: 10-1-1118 C (3) and (5)**

**3. Issue: Inspections and RF Testing**

*Council Direction: Require independent certification every five years to offset increased amount of staff resources needed.*

**Proposed Code Text: 10-1-1118 E (2)**

**4. Issue: Length of Permit**

*Council Direction: Require 10 year expirations for CUPs.*

**Proposed Code Text: 10-1-1118 C (4)**

**5. Issue: Noise Pollution**

*Council Direction: Require more information on potential noise impacts on the application form.*

**Proposed Code Text: 10-1-1118 D (3) (c)**

**Also, see Revised Application Form**

**Note: Staff may recommend the City Council separately reexamine the Noise Element to assess on a community level noise impacts and re-evaluate the efficacy of the existing thresholds.**

**6. Issue: Hazardous Materials/Equipment Disclosures**

*Council Direction: Require more information on hazardous materials and equipment disclosures on the application form.*

**See Revised Application Form**

**7. Issue: Noticing and Signage**

*Council Direction: 10 **business** days' notice (similar to right-of-way sites).*

*CURRENTLY IN EFFECT*

*Council Direction: Post 3' x 4' sign at site of proposed installation for projects requiring CUPs and Administrative Use Permits.*

**Proposed Code Text: All discretionary permit procedures are proposed to be modified to include the following language: "One four (4) foot by eight (8) foot sign, approved by the Community Development Director, shall be posted on the subject property. The sign shall be posted no less than ten (10) business days prior to the scheduled hearing or decision date"**

**10-1-1118: WIRELESS TELECOMMUNICATIONS FACILITIES. REGULATIONS AND DEVELOPMENT STANDARDS:**

**A. PURPOSE.**

The purpose of this Section is to provide uniform standards for the placement, design, monitoring, and permitting of Wireless Telecommunications Facilities (WTFs) consistent with applicable federal and state requirements. These standards are intended to address the adverse visual impacts of these facilities through appropriate design, siting, screening techniques, and locational standards, while providing for the communication needs of residents and businesses. This Section is not intended to, and does not; regulate those aspects of WTFs that are governed by the Federal Communications Commission (FCC).

## B. APPLICABILITY AND EXEMPTIONS.

The requirements of this Section apply to all WTFs as defined in Section 10-1-203, except as exempted. The following are exempt from the provisions of this Section:

1. Radio or Television Antenna: Any ground- or building-mounted antenna that receives radio or television signals for use only by owners or occupants of the property or development on which the antenna is located that does not exceed a height of 15 feet above the maximum allowable building height for the zone in which the antenna is located.
2. Satellite Dish Antenna: Ground- or building-mounted dish antenna that receives radio or television signals for use only by owners or occupants of the property or development on which the dish is located that does not exceed one meter in diameter.
3. Private Antenna: Any antenna operated by a business for the purpose of sending or receiving radio, television, data, or other wireless signals directly between two business locations or to satellites for re-transmission. Such facilities are regulated by the applicable commercial and industrial development standards including but not limited to Section 10-1-1113.1 and 10-1-1301.
4. Amateur Radio Antenna: Any antenna, including its support structure, used by an authorized amateur radio operator licensed by the FCC that does not exceed a height of 15 feet above the maximum allowable building height of the zone in which it is located. For the purpose of this section, amateur radio means the licensed non-commercial, non-professional, private use of designated radio bands for purposes of private recreation including the non-commercial exchange of messages and emergency communication. This includes HAM radio and citizens band antenna.
5. Government Antenna: Any antenna, dish, or similar equipment owned and/or operated by any government entity.

## C. PERMITTING PROCESS.

1. An application is required for all WTFs. Applications for WTFs requiring a land use permit must be accompanied by the applicable permit application. The Director is required to maintain a list of required application forms and materials and a written procedure for processing WTF applications, which may be amended from time to time. The application must be accompanied by a fee if specified in the Fee Resolution. A WTF application must include documentation of compliance with FCC regulations pertaining to radio frequency emissions, including cumulative emissions from any existing WTFs on the site and the proposed WTF, in a manner deemed appropriate by the Director.

2. Table 10-1-1118(C) provides the locations where WTFs are allowed and the land use permit, if any, required for the WTF. WTFs in the public right-of-way are subject to the requirements in Section 7-3-708.

**Table 10-1-1118 (C)**

<b>Symbol</b>	<b>Meaning</b>			
<b>P</b>	Permitted			
<b>AUP</b>	Administrative Use Permit required			
<b>[AUP]</b>	Administrative Use Permit required if residentially adjacent			
<b>CUP</b>	Conditional Use Permit required			
<b>--</b>	Prohibited			
<b>WTF Type</b>	<b>Institutional Use<sup>1</sup> in Single Family Residential Zone</b>	<b>Multifamily Residential Zone</b>	<b>Non-Residential Zone (except OS)</b>	<b>OS Open Space Zone</b>
<b>Building Mounted Co-Location</b>	AUP	AUP	P	P [AUP]
<b>Building Mounted</b>	CUP	CUP	P [AUP]	AUP
<b>Freestanding Co-Location</b>	--	--	P [AUP]	AUP
<b>Freestanding</b>	--	--	CUP	CUP
<b>All other WTFs not listed above or not exempted by 10-1-1118(B)</b>	CUP	CUP	CUP	CUP

**Footnotes**

1. For the purposes of this Section, institutional use means a public or private school, religious institution, hospital, library, museum, government building, public utility, or other similar public or semi-public facility.

2. A CUP is also required to exceed WTF height limitations per Subsection D.

**3. Conditions:**

**The Council, Board, or Director upon approving a Conditional Use Permit or Administrative Use Permit for a WTF may include any other impact**

minimizing conditions as deemed appropriate to address an identified impact.

#### 4. Duration of Permit

Approved Conditional Use Permits and Administrative Use Permits for WTFs shall expire after 10 years. The applicant may re-apply for a new Conditional Use permit or administrative use permit as required by this Article to continue to use and operate the existing facility, but may, upon review, be required to upgrade it to comply with such additional standards, and incorporate such additional technologies, as the City may lawfully impose through its evaluation and approval of such re-application.

#### 5. Requirements for WTFs in the Single Family Residential Zone.

The Council, Board, or Director upon approving a Conditional Use Permit or an Administrative Use Permit must find that:

- a. The WTF is necessary to address a significant gap in coverage.
- b. There are no other feasible alternative locations or design configurations that would be less intrusive.

#### 6. Eligible Facilities Requests:

Eligible Facilities Requests that do not require a Substantial Change in Physical Dimensions shall be processed in accordance with 47 U.S.C. § 1455, and any duly authorized implementing orders and regulations of the Federal Communications Commission. In reviewing permits for qualifying Eligible Facilities Requests, the Council, Board, or Director shall be required to approve applications, but shall retain discretion to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws (including, without limitation, this Article) codifying objective standards reasonably related to health and safety.

### D. DEVELOPMENT AND DESIGN STANDARDS.

All WTFs approved pursuant to this Article shall be subject to the following development and design standards, which are designed to, among other things, promote and constitute concealment elements for towers and base stations.

#### 1. New Facilities.

All ~~new~~ WTFs approved pursuant to this Article must comply with the following development and design standards except when impractical or technologically infeasible. The burden shall be on the applicant to provide evidence as part of the application showing why and how complying with the standard would be impractical or technologically infeasible. In such event, the Director may hire an independent, qualified consultant to evaluate any technical aspect of the proposed WTF and any proposed exceptions from these development standards

at the applicant's sole cost. The applicant shall submit a deposit to pay for such independent third party review as set forth in the City's Fee Resolution.

## 2. Existing Facilities.

All WTFs approved with a Conditional Use Permit or building permit as of the date of adoption of the ordinance codified in this Section are not required to comply with the development and design standards unless the WTF or any portion thereof is replaced or modified, **and such replacement or modification is not otherwise exempt from compliance with the Article codified in this Section (as it may be amended from time to time)**. Any replacement or modification shall be ~~done~~ consistent with these standards to the extent ~~practical and technologically~~ feasible, based on the scope of the replacement or modification. The burden shall be on the applicant to provide evidence as part of the application showing why and how complying with the standard would be ~~impractical or technologically~~ infeasible. In such event, the Director may hire an independent, qualified consultant to evaluate any ~~technical~~ aspect of the proposed replacement or modification and any proposed exceptions from these development standards at the applicant's sole cost. The applicant shall submit a deposit to pay for such independent third party review as set forth in the City's Fee Resolution. This provision is not intended for the addition of generators for **temporary** emergency power.

## 3. Requirements for All WTFs.

a. Where practical, WTFs shall be integrated into existing or newly developed facilities that are functional for other purposes.

b. WTFs shall incorporate stealth design so as to minimize aesthetic impacts on surrounding land uses. Stealth design means that the WTF is designed to closely blend into the surrounding environment and to be minimally visible. Antennas and related equipment are either not readily visible beyond the property on which it is located, or, if visible, appear to be part of the existing landscape or environment rather than the wireless communications facility. The WTF may appear as a natural feature, such as a tree or rock or other natural feature, or may be incorporated into an architectural feature such as a steeple, parapet wall, or light standard, or be screened by an equipment screen, landscaping, or other equally suitable method. Related equipment shall be designed to match the architecture of adjacent buildings and/or be screened from public view by walls, fences, parapets, landscaping, and similar treatments.

c. Related equipment for co-located WTFs shall be co-located within an existing equipment enclosure, or if not possible then located **within a new equipment enclosure** as close to the existing equipment enclosure as possible.

d. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension than is reasonably necessary for the proper functioning and physical support of the WTF and future co-location of additional WTFs.

e. Cable Trays and Runs.

1. All cable trays and cable runs for building-mounted WTFs shall be located within existing building walls.

2. Any facade-mounted cable trays and runs shall be painted and textured to match the building and shall be mounted as close to the facade surface as possible, with no discernible gap between.

3. Cable trays and runs on a roof deck shall be mounted below or otherwise screened by the parapet wall or screening device.

4. Cable trays and runs for freestanding WTFs shall be located inside the pole and underground.

f. Stealth WTF's designed to resemble natural features such as trees or rocks shall be integrated into the surrounding environment through the planting of trees and/or shrubs distributed around the entire facility to appear as a naturally occurring or integrated landscape element.

g. Whenever landscaping is used in conjunction with a WTF for stealth design, to screen related equipment, or for another purpose, the following requirements apply:

1. Any new or replanted landscaping shall be of a type and variety that is compatible with existing landscaping.

2. Any tree removed shall be replaced with one or more trees of similar quality and size.

3. When used for screening, the landscaping shall be of a type, variety, and maturity to adequately screen the related equipment.

4. Newly installed trees shall be a minimum size of 36 inch box.

5. Palm trees shall have a minimum brown trunk height of 16 feet.

6. Newly planted shrubs shall have a minimum size of five gallons.

7. Live landscaping shall be provided with adequate and permanent irrigation to support continued growth.



h. Fences and Walls.

1. Chain link fencing material is only permitted in association with a WTF in an industrial zone where the fence is not visible from the public right-of-way or adjacent non-industrial zone.

2. Block walls must be covered with stucco or plaster except in industrial zones.

i. Signs.

1. All WTFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency.

2. No signs, flags, banners, or any form of advertising shall be attached to a WTF except for government-required certifications, warnings, or other required seals or signs.

j. No WTF or any portion thereof may be located within a required setback area.

k. WTFs operating in excess of the maximum sound levels permitted by the City's noise ordinance shall be enclosed to achieve compliance with the noise ordinance. Backup generators or similar equipment that operates only during power outages or other emergencies are exempt from this requirement. Testing of such backup generators or similar equipment may only occur during standard daylight hours, and in no event prior to 7:00 a.m. Monday through Friday and 8 a.m. on Saturday.

l. No WTF may, by itself or in conjunction with other WTFs, generate radio frequency emissions and/or electromagnetic radiation in excess of FCC standards and any other applicable regulations. All WTFs must comply with all standards and regulations of the FCC, and any other agency of the State or Federal government agency with the authority to regulate wireless telecommunications facilities.

m. Within 30 days after discontinuation of use, the WTF operator shall notify the Director in writing that use of the WTF has been discontinued.

n. A WTF must be completely removed, and the site returned to its pre-WTF condition within 180 days of discontinuation of use.

**o. All WTF application approvals shall indicate that the approved WTF configuration was designed to conceal elements of the tower or base station to the extent feasible, and that further expansion of the WTF or its associated facilities would defeat those concealment elements.**

4. Additional Requirements for Building-Mounted WTFs.

a. New Building-mounted WTFs, including any screening devices, ~~may~~ shall not exceed a height of 15 feet above the roof or parapet, whichever is higher, of the building on which it is mounted unless approved through a Conditional Use Permit.

b. Building-mounted WTFs shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. Antennas shall be located entirely within an existing or newly created architectural feature so as to be completely screened from view.

c. Building-mounted WTFs shall be located on the facade of the building, parapet, or rooftop penthouse whenever practical.

d. Facade-mounted WTFs shall not extend more than 24 inches out from the building face. If a building mounted WTF is mounted flush against a building wall, the color and material of the antenna and other equipment shall match the exterior of the building. If there is a discernable gap between the antenna and the facade, the antenna shall be screened so as to hide the gap.

e. Roof-mounted WTFs shall be fully screened from public view using screening devices that are compatible with the existing architecture, color, texture, and/or materials of the building. Roof-mounted WTFs shall also be screened from above, if visible from adjacent properties.

f. Roof-mounted WTFs shall be located as far from the edge of the building as feasible.

5. Additional Requirements for Freestanding WTFs (Except for Amateur Radio Antennas).

a. An applicant for a freestanding WTF shall demonstrate as part of the application that a proposed WTF cannot be placed on an existing building or co-located.

b. Freestanding WTFs, including any camouflage or screening devices, may not exceed a height of 35 feet above the ground surface unless approved through a Conditional Use Permit.

c. Freestanding WTFs shall be compatible with the architecture, color, texture, and/or materials of nearby buildings and the surrounding area and landscaping.

d. Freestanding WTFs shall be located in areas where existing topography, vegetation, buildings or other structures provide the greatest amount of screening so as to minimize aesthetic impacts on surrounding land uses.

e. Freestanding WTF's shall be designed to allow for co-location of additional antennas, for example by having a foundation and pole capable of accommodating a height extension. The operator and owner of the freestanding WTF shall lease space on the tower, at a fair market rent, to other WTF providers to the maximum extent consistent with the operational requirements of the WTF.

f. Any mono-tree shall incorporate enough architectural branches (including density and vertical height), three dimensional bark cladding, and other design materials or appropriate techniques to cause the structure to appear a natural element of the environment.

g. Freestanding WTFs may not utilize guy wires or other diagonal or horizontal support structures.

h. Exterior lighting of freestanding WTF's is prohibited unless required by the FAA or other government agency.

i. Freestanding WTF's that simulate the appearance of a flag pole shall be tapered to maintain the appearance of an actual flag pole. A flag shall be flown from the WTF and properly maintained at all times.

#### E. RADIO FREQUENCY EMISSIONS COMPLIANCE.

1. Within thirty (30) calendar days following the activation of any WTF, the applicant shall provide a FCC **radio frequency emissions compliance report** documentation to the Director indicating **certifying** that the unit has been inspected and tested in compliance with FCC standards. **Such** documentation **report and certification** shall include:

a. The make and model (or other identifying information) of the unit tested.

b. The date and time of the inspection, the methodology used to make the determination,

c. The name and title of the person(s) conducting the tests, and a certification that the unit is properly installed and working within applicable FCC standards.

d. As to DAS installations, the required FCC **radio frequency emissions compliance report** documentation certification shall be made only by the wireless carrier(s) using the DAS system ~~rather than the DAS system provider.~~

e. **The report and certification** ~~Documentation~~ shall also indicate that cumulative levels of radio frequency emissions from the WTF and all co-located WTFs are in compliance with FCC standards, including but not limited

to FCC Office of Engineering Technology Bulletin 65, Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, as amended.

**2. Every five years following compliance with 1-1-1118 E (1) above, the applicant shall, at the WTF owners sole cost, prepare and submit to the City an updated radio frequency emissions compliance report and certification, shall certify that the WTF complies with all applicable FCC standards as of the date of the update.**

**3. If the radio frequency emissions compliance report and certification, and/or any update thereto,** demonstrates that the cumulative levels of radio frequency emissions exceed or may exceed FCC standards, the Director may require the applicant to modify the location or design of the WTF and/or implement other mitigation measures to ensure compliance with FCC standards. The Director may require additional independent technical evaluation of the WTF, at the applicant's sole cost, to ensure compliance with FCC standards.

#### F. PREEMPTION.

1. Notwithstanding any other provision of this Code to the contrary, **an applicant may request a variance to excuse it from having to comply with this Section, or may appeal from the denial of an application reviewed under this Section, on the ground that the requirement or action taken by the City would violate state or federal law. The City shall grant the variance or appeal, or excuse an applicant from compliance with all or a portion of this Section, if it finds based on substantial evidence in the record that the challenged requirement or action is preempted by state or federal law.**

[Added by Ord. No. 3439, eff. 7/22/96; Amended by Ord. No. 3817, eff. 10/14/11; 3810; 3791.]

## **Definitions**

**FREESTANDING WTF:** Means a wireless telecommunications facility with its support structure placed directly on the ground. Monopoles, **towers**, and self-supported or of lattice construction are examples of this type of structure. Building mounted antennas are excluded from this definition.

**BUILDING MOUNTED WTF:** Means a wireless telecommunications facility whose support structure is mounted to a building or rooftop.

**CO-LOCATION:** Means the location of two or more wireless telecommunications facilities on a single freestanding support structure or building. Co-location shall also include the location of wireless telecommunications facilities with other utility facilities and structures including, but not limited to, water tanks, transmission towers, and light poles.

**ELIGIBLE FACILITIES REQUEST:** means a request for modification of an existing wireless tower or base station that involves (a) a co-location of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment

**SUBSTANTIAL CHANGE IN PHYSICAL DIMENSIONS:** means a change in the physical dimensions or configuration of a WTF that defeats the concealment elements of the originally permitted WTF, that result in public safety, visual, noise, or other impacts that are materially greater than those that would have existed if the WTF were installed as originally permitted, or that otherwise falls within criteria established for defining a “Substantial Change in Physical Dimensions” by a duly authorized agency of the United States. The determination of whether or not a proposed modification to a WTF constitutes a substantial change in physical dimensions shall be made by the Director or his/her designee.

## **Summary of Public Right-of-Way Concerns and the Proposed Code Sections Which Address the Concerns**

### **1. Issue: WTF Type Preferences**

*Council Direction: Increase the burden of proof for applicants and only allow new poles upon showing:*

- i. Significant gap.*
- ii. No feasible less intrusive alternative.*
- iii. Imposition of impact-minimizing conditions.*

**Proposed Code Text: 7-3-708 B (5) (v)**

### **2. Issue: Siting in Residential Zones**

*Council Direction: Increase the burden of proof for applicants and only allow WTFs adjacent to residential zones upon showing:*

- i. Significant gap.*
- ii. No feasible less intrusive alternative.*
- iii. Imposition of impact-minimizing conditions.*

**Proposed Code Text: 7-3-708 A (1) (2) (3)**

### **3. Issue: Aesthetics and Underground Equipment**

*Council Direction: No change from existing ordinance, which requires compliance with the aesthetic regulations found in Title 10, unless impractical or technologically infeasible.*

***Note: Due to the abundance of existing underground infrastructure the likelihood of utility conflicts and secondary impacts such as increased noise it is likely that in most cases, it will be determined that is not feasible to underground equipment in the PROW. However, the community concerns about above ground utility boxes in general, and not just equipment associated with WTFs, have been recognized by City Council and the issue has been separated from the WTF Ordinance update in order to more closely examine the issue and determine what possible solutions may exist to address community concerns.***

**4. Issue: Discretionary Permits for WTFs in PROW**

*Council Direction: The Encroachment Permit includes appeal rights to the City Council. Increase the burden of proof for applicants. Permit WTFs in or adjacent to single-family residential zones only upon showing:*

- i. Significant gap.*
- ii. No feasible less intrusive alternative.*
- iii. Imposition of impact-minimizing conditions.*

**Proposed Code Text: 7-3-708 A (1) (2) (3)**

**5. Issue: Inspections and Radio Frequency Testing**

*Council Direction: Require independent testing every five years to offset increased amount of staff resources needed*

**Refers back to Proposed Code Text: 10-1-1118 E (2)**

**6. Issue: Length of Permit**

*Council Direction: Require 10 year permit reviews for Encroachment Permits*

**Proposed Code Text: 7-3-708 A (1) (2) (3)**

**7. Issue: Noise Pollution**

*Council Direction: Additional information must be provided as part of the application process, applicant must demonstrate compliance with the Noise Ordinance. All equipment must be in an enclosure.*

**Proposed Code Text: 10-1-1118 D (3) (c)**

**Also, see Revised Application Form**

**Note: Staff may recommend the City Council separately reexamine the Noise Element to assess on a community level noise impacts and re-evaluate the efficacy of the existing thresholds.**

**8. Issue: Safety**

*Council Direction: Require demonstration of compliance with General Order 95 (state regulations regarding overhead utility design and operational safety requirements) prior to installation*

**Note: Applicant must demonstrate compliance as part of the Encroachment Permit application process.**

## **9. Issue: Noticing and Signage**

*Council Direction: Current Ordinance has already been changed to require 10 business days and a 1,000 foot mailed noticing radius. No change from existing ordinance due to safety issue with signage in the PROW.*

- i. Note: Although not required by Code, staff has already committed to using fluorescent orange or yellow postcards for mailed notices.*

## **10. Issue: Enhanced Encroachment Permit for the Public Right-of-Way to be similar to the AUP.**

*City Council Direction: Applications for WTF Encroachment Permits will increase the burden of proof for applicants. Applicants for new poles and for WTFs adjacent to residential zones must demonstrate:*

- i. Significant gap*
- ii. No feasible less intrusive alternative.*
- iii. Imposition of impact-minimizing conditions*

**Proposed Code Text: 7-3-708 A (1) (2) (3)**

### **7-3-708: ENCROACHMENT PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES (WTFs) IN THE PUBLIC RIGHT-OF-WAY (PROW):**

A. A WTF Encroachment Permit shall be required prior to the installation, construction or development of any WTF in the PROW.

**1. The Director may impose impact minimizing conditions on a WTF Encroachment Permit to mitigate potential noise or aesthetic impacts.**

**2. WTF Encroachment Permits shall be reviewed every 10 years to determine whether the equipment is no longer needed and or useful, or whether new means exist to further reduce noise and or aesthetic impacts that are materially greater than those that would have existed when the WTF was installed as originally permitted.**

**a. The Director may require facility upgrades and/or additional mitigations to reduce impacts of such facilities unless the applicant demonstrates that the mitigations are not feasible.**

**3. When the PROW abuts or is adjacent to an R-1, Single Family Residential Zone, the Director, in granting an Encroachment Permit must find that**



- a. The WTF is necessary to address a significant gap in coverage.
- b. The WTF is necessary because no feasible less intrusive alternative is available.

4. Eligible Facilities Requests: Eligible Facilities Requests that do not require a Substantial Change in Physical Dimensions shall be processed in accordance with 47 U.S.C. § 1455, and any duly authorized implementing orders and regulations of the Federal Communications Commission. In reviewing WTF Encroachment Permits for qualifying Eligible Facilities Requests, the Director shall be required to approve applications, but shall retain discretion to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws (including, without limitation, this Article) codifying objective standards reasonably related to health and safety.

B. Development standards for PROW. In addition to all other applicable development standards as set forth in [10-1-1118](#), WTFs in the PROW shall comply with the following standards:

1. The Public Works Director or his/her designee shall determine the time, place, and manner of construction for all WTFs located within the PROW consistent with Public Utilities Code.
2. WTFs shall have subdued colors and non-reflective materials which blend in with the surrounding area to the satisfaction of the Public Works Director or his/her designee.
3. In residential areas, WTFs shall not be located within one standard block width of another wireless telecommunications facility; this does not include co-location of sites.
4. All WTFs shall be built in compliance with the Americans with Disabilities Act (ADA), including but not limited to surface access in and around facilities.
5. Utility and Light Poles.
  - a. The maximum height of any antenna shall not exceed 24 inches above the height of an existing utility pole and no portion of the antenna or equipment mounted on a pole shall be less than 16 feet above any

drivable road surface. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95.

b. The maximum height of any antenna or antenna radome shall not exceed six feet above the height of an existing light pole.

c. Pole-mounted equipment shall not exceed six cubic feet.

d. Antennas shall be installed on existing utility or light poles, except when impractical or technologically infeasible. No new poles may be installed except as replacements for existing poles, or when the applicant provides evidence as part of the application showing why and how complying with the foregoing standard would be impractical or technologically infeasible. In such event, the Public Works Director may hire an independent, qualified consultant to evaluate any technical aspect of the proposed replacement or modification and any proposed exceptions from these development standards at the applicant's sole cost. The applicant shall submit a deposit to pay for such independent third party review as set forth in the City's Fee Resolution.

e. WTF Encroachment Permits granted for any new poles shall be processed in accordance with the following procedures:

i. PUBLIC NOTICE. Prior to the Public Works Director's decision on a WTF Encroachment Permit application, public notice shall be mailed to every property owner and occupant within 1,000 feet of the proposed WTF site. Such notice shall be mailed no less than ten (10) business days prior to the scheduled Director's decision date and shall include information about the proposed project, the Director's pending decision, and information about when and how an appeal may be filed.

ii. DECISION DATE. If circumstances require, the Director's decision may occur on a date later than the date provided in the public notice. The decision may not occur on a date earlier than the date provided in the public notice.

iii. APPEALS. The Director's decision regarding a WTF Encroachment Permit application may be appealed in accordance with the procedures set forth in Section [07-3-708.5](#).

iv. EXEMPTION. Any WTF used exclusively for the collection and/or transmission of utility customer meter data shall be exempt from the provisions of this subsection e. This exemption shall expire and become inoperative on August 7, 2013.

**v. The Director, in granting an Encroachment Permit for any new pole must find that**

**a. The WTF is necessary to address a significant gap in coverage.**

**b. The WTF is necessary because no feasible less intrusive alternative is available.**

**c. Additionally, the Director may impose impact minimizing conditions on an encroachment permit to mitigate potential noise or aesthetic impacts.**

**6. Equipment Location.**

a. Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise inconvenience public use of the right-of-way, or create safety hazards to pedestrians and/or motorists as determined by the Public Works Director or his/her designee.

b. In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb.

c. Ground-mounted equipment shall not exceed a height of six feet and a total footprint of 20 square feet, excluding the required electric meter.

d. Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, through the use of landscaping, walls, or other decorative features, to the satisfaction of the Public Works Director or his/her designee.

e. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Public Works Director or his/her designee.

f. All graffiti on WTF must be removed at the sole expense of the applicant within 48 hours of notification.

g. Underground vaults will be reviewed and approved by the Public Works Director or his/her designee. Review may include but not be limited to: safe clearance from other utilities, ADA compliance, aesthetic impact and quiet mechanical heating, air conditioning or ventilation systems.

**7. Within 30 days after discontinuation of use, the WTF operator shall notify the Director in writing that use of the WTF has been discontinued.**

**8. A WTF must be completely removed, and the site returned to its pre-WTF condition within 180 days of discontinuation of use.**

#### C. City Changes to the PROW

The permittee shall modify, remove, or relocate its WTF, or portion thereof, without cost or expense to the City, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance, or operation of any other City underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency. Said modification, removal, or relocation of a wireless telecommunications facility shall be completed within a reasonable relocation time frame as determined by the Public Works Director. In the event a wireless telecommunications facility is not modified, removed, or relocated within said period of time, City may cause the same to be done at the sole expense of applicant. Further, in the event of an emergency, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to applicant provided applicant is notified within a reasonable period thereafter. [Added by Ord. No. 3817, eff. 10/14/11; Amended by Ord. No. 3835, eff. 2/8/13.]

#### **D. Preemption**

**Notwithstanding any other provision of this Code to the contrary, an applicant may request a variance to excuse it from having to comply with this Section, or may appeal from the denial of an application reviewed under this Section, on the ground that the requirement or action taken by the City would violate state or federal law. The City shall grant the variance or appeal, or excuse an applicant from compliance with all or a portion of this Section, if it finds based on substantial evidence in the record that the challenged requirement or action is preempted by state or federal law.**

#### **7-3-708.5: APPEAL OF DIRECTOR'S DECISION ON WIRELESS TELECOMMUNICATIONS FACILITY ENCROACHMENT PERMITS:**

##### **A. DECISION PROCEDURE.**

1. A decision that requires the Public Works Director to approve, **Any approval, conditional approval or denial of** ~~conditionally approve, or deny~~ a Wireless Telecommunication Facility Encroachment Permit application may be appealed to the City Council as provided in this section.

A Director's decision is not final unless and until the specified appeal period passes and no appeal is filed, or all appeals are withdrawn per Subsection (E).

2. If an appeal of a Director's decision is filed, the City Council must hold a de novo hearing to consider and act on the application and appeal pursuant to the procedures established for Wireless Telecommunications Facility Encroachment Permits.

#### B. PERSONS WHO MAY APPEAL.

1. Any person, including the project applicant, may appeal a decision by the Director to approve, conditionally approve, or deny a Wireless Telecommunication Facility Encroachment Permit application.

2. If a City Council member files an appeal, the Council member may not participate as a decision maker in the City Council public hearing.

3. The City Council may appeal or otherwise request to review a Director's decision.

#### C. TIME AND MANNER OF APPEAL.

1. An appeal of the Director's decision must be submitted by 5:00 p.m. on the 15th day following the date that the Director's decision is issued. If the 15th day following the Director's decision date occurs on a day when City offices are closed, the appeal must be submitted by 5:00 p.m. on the next day that City offices are open.

2. An appeal must be submitted in person to the office of the Public Works Director and must include a statement of the reasons for the appeal. Mailed, emailed or faxed appeals will not be accepted.

3. The appeal must be accompanied by the appeal fee specified in the City of Burbank Fee Resolution, as may be amended from time to time, except that City Council members are not required to pay the appeal fee.

#### D. MULTIPLE APPEALS.

1. No one should forego filing an appeal in reliance on another individual's appeal. Anyone who objects to a Director's decision, or any conditions placed upon a conditional approval, should file an appeal to ensure that its concerns are heard in the event that other appeals are withdrawn per Subsection (E).

2. Multiple individuals may collectively act as one appellant, and submit a single appeal with a single set of reasons for appeal. In such case, payment of only one (1) appeal fee is required, and the appellants may divide the cost of the fee among themselves at their discretion.
3. Alternatively, multiple individuals may act as individual appellants, and each file its own individual appeal. In such case, payment of the full appeal fee is required for each individual form submitted.
4. All appeals filed whether as a single appeal or multiple appeals, must be considered together at a single hearing and acted upon by the City Council at the same time.

#### E. WITHDRAWAL OF APPEAL.

1. Any person who has filed an appeal may withdraw the appeal as a matter of right, until the City Clerk has scheduled the City Council hearing. In such case, an appeal may not be withdrawn on or after the 20th day prior to the scheduled City Council hearing.
2. A request to withdraw an appeal must be submitted in person to the office of the Public Works Director in writing and signed by the appellant. Mailed, emailed or faxed requests for withdrawal will not be accepted.
3. If multiple individuals collectively submitted a single appeal form, all individuals signing the appeal form must sign and submit a written request to withdraw the appeal within the time specified in Subsection (1) for the appeal to be considered withdrawn.
4. If all appeals are withdrawn and no subsequent appeals are filed within the times specified in Subsections (C) and (F), then the application will be removed from the City Council scheduled agenda, and the City Council will not consider or act upon the application. The Director's decision thereafter becomes final and may not be further appealed.

#### F. SECONDARY APPEAL PERIOD.

1. Upon the withdrawal of an appeal (and only if no other appeals remain outstanding), a secondary ten (10)-day appeal period shall automatically commence to provide an additional opportunity to appeal (the "Secondary Appeal Period").

2. The first day of the Secondary Appeal Period is the latter of the following:  
1) first day after the appeal was withdrawn, whether or not that day is a business day, or 2) the first day after the expiration of the initial 15-day appeal period provided in Subsection (C), whether or not that day is a business day. The latter date only applies to those appeals which are withdrawn during the initial appeal time period.
3. Appeals submitted during the Secondary Appeal Period must be submitted in accordance with this Section, including but not limited to the 5:00 p.m. deadline for the filing of any appeal. If the last day of the Secondary Appeal Period occurs on a day City offices are closed, then the last day for filing shall be extended to 5:00 p.m. on the next day that the City offices are open.
4. Appeals submitted during this Secondary Appeal Period may be withdrawn in accordance with Subsection (E); however, only one (1) Secondary Appeal Process is allowed on any application. Withdrawal of an appeal made during the Secondary Appeal Period will not lead to any additional appeal periods.
5. Notice of the Secondary Appeal Period will be provided to any person who requests in writing such notice. A request shall be made to the Director on any individual application at any time; however, only those individuals on record at the time of a withdrawal that triggers a Secondary Appeal Period shall receive notice. Notice may be provided in the manner specifically requested (telephone or electronic mail), and must also be posted at the Public Works counter. Additional notice may be provided through any other additional means deemed appropriate by the Director. [Added by Ord. No. 3835, eff. 2/8/13.]

## Changes to Public Noticing Requirements

### 10-1-1921: CITY PLANNER SETS HEARING AND GIVES NOTICE:

5. One four (4) foot by eight (8) foot sign, approved by the Community Development Director, shall be posted on the subject property. The sign shall be posted no less than ten (10) business days prior to the scheduled hearing

### 10-1-1942: CITY PLANNER SETS A HEARING AND GIVES NOTICE:

5. One four (4) foot by eight (8) foot sign, approved by the Community Development Director, shall be posted on the subject property. The sign shall be posted no less than ten (10) business days prior to the scheduled hearing

### 10-1-1959: DETERMINATION ON ADMINISTRATIVE USE PERMIT; NOTICE AND HEARING:

#### B. DECISION AND NOTICE.

Additionally, one four (4) foot by eight (8) foot sign, approved by the Community Development Director, shall be posted on the subject property. The sign shall be posted no less than ten (10) business days prior to the scheduled decision date.

### 10-1-1964: NOTICE OF HEARING:

4. One four (4) foot by eight (8) foot sign, approved by the Community Development Director, shall be posted on the subject property. The sign shall be posted no less than ten (10) business days prior to the scheduled hearing

#### G. PLANNING BOARD HEARING.

3. One four (4) foot by eight (8) foot sign, approved by the Community Development Director, shall be posted on the subject property. The sign shall be posted no less than ten (10) business days prior to the scheduled hearing.